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April 10, 1995

HAND DELIVERED

The Honorable William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20544

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Unbundling
of Local Exchange Carrier
Common Line Facilities
Docket RM-8614

Dear Mr. Caton:

Enclosed for filing are an original and 11 copies of the
Comments of the Maryland Public Service Commission. Please
distribute a copy to each of the Commissioners.

Sincerely,

Susan Stevens Miller

Susan Stevens Miller
Assistant General Counsel

SSM:mc
Enclosure

cc: International Transcription Service

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

APR 10 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Unbundling of Local)	RM - 8614
Exchange Carrier)	
Common Line Facilities)	

COMMENTS OF THE MARYLAND PUBLIC SERVICE COMMISSION

The Public Service Commission of Maryland ("Maryland Commission") offers these comments in response to the Petition for Rulemaking filed on March 7, 1995 by MFS Communications Company ("MFS").

MFS asks the Federal Communications Commission ("FCC" or "Commission") to adopt rules requiring Tier 1 LECs to unbundle the local loop portion of their networks in states that have authorized local exchange competition. Specifically, MFS asks this Commission to require these LECs to (1) make available unbundled loops in any study area in which the state commission has authorized local exchange competition; (2) to permit interconnection to such loops via tariff expanded interconnection arrangements consistent with those already in place for special and switched access; (3) to comply with uniform minimum technical criteria; and (4) prohibit LECs from charging more for the interstate component [end-user CCL charge] of the unbundled loops than they charge end-users for the same services. While MFS did not propose the FCC set rates for

unbundled loops, MFS did suggest that this Commission draft "national guidelines" and "enforce" those guidelines by granting enhanced interstate pricing flexibility for their interstate access services to those state commissions which adopt them.

The Maryland Commission opposes this Petition because (1) states are capable and are the most appropriate forum for addressing the technical issues of local loop unbundling; (2) state commissions are capable of setting their own policy regarding pricing of the unbundled local loop; (3) the unbundling proposal is not in the public interest; and (4) wireless and cable television providers are a feasible alternative to the local loop.

**A) States are Capable of Addressing the
Technical Issues of Local Loop Unbundling.**

In Case No. 8584 Phase I, the Maryland Commission approved, in principle, the unbundling of links and local exchange ports.¹ The Maryland Commission's policy is to require unbundling by Bell Atlantic of Maryland ("BA-MD") to the extent that the purchase of unbundled elements is requested by a co-carrier, reseller or interconnector and is reasonably and technically feasible without causing damage to network

¹ In the Matter of the Application of MFS Intelnet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Interexchange Telephone Service; and Requesting the Establishment of Policies and Requirements for the Interconnection of Competing Local Exchange Networks, Order No. 71155, issued April 25, 1994.

integrity. The Maryland Commission granted MFS Intelnet of Maryland, Inc. ("MFS-I") authority to provide and resell local exchange and interexchange telephone services on a facility and resale basis in Maryland. BA-MD was required to interconnect with MFS-I at tandem and central office switches. An interim interconnection rate of \$.06 was established when MFS, or other local exchange carrier, hands over to BA-MD a local call for termination on BA-MD's network.² MFS-I was ordered to file a tariff, with cost support, to establish a termination charge.

The record in that proceeding was insufficient to establish prices for links and ports separately. Therefore, decision on that issue was deferred to Phase II of Case No. 8584. The record being developed in this Phase will permit examination of more detailed information and decision on the principles that should guide the setting of the appropriate rates for unbundled services.³

In Case No. 8587, the Maryland Commission fully considered the various processes for unbundling BA-MD's network advanced by the numerous parties.⁴ The Maryland Commission

² BA-MD's tariff rate for completing its customers' end-to-end local business call in Maryland is about \$.09.

³ In Case No. 8584, Phase II, which currently is pending before the Commission, the Commission is considering if the mark-up above incremental costs included in the \$.06 charge is reasonable.

⁴ In the Matter of the Petition of the Office of People's Counsel for An Investigation into the Appropriate Regulation of Telecommunications Carriers and Cable Television Companies Which May Provide Local Exchange and Exchange Access Services in Maryland, Order No. 71485, issued October 5, 1994.

adopted a process similar to the process utilized by the New York Public Service Commission. A carrier may request that a specific BA-MD network element be unbundled by letter addressed to the Maryland Commission's Executive Secretary (with a copy to BA-MD). Initially, the matter will be referred to the Maryland Commission's Staff, who will convene a collaborative process to promptly work out the technical details associated with interconnection and pricing of the unbundled functionalities. If the matter is not resolved, the Commission will take up the case on an expedited basis.

Finally, MFS and BA-MD currently are conducting a joint cooperative test on loop unbundling. The aim of the test is to identify and develop the administrative, operational and technical procedures associated with provisioning a voice-grade analog unbundled. The following results are expected from the trial:

1. Definition of the elements which comprise loop "unbundling";
2. Identification of test requirements;
3. Identification of ordering process;
4. Identification of provisioning requirements for both connect and disconnect/restorable (coordinated cutover procedure);
5. Identification of maintenance requirements;
6. Identification of billing system requirements;
7. Assessment of applicable technical limitations;
8. Assessment of network reliability issues;
9. Evaluation of methods to inventory links;
10. Identification of end user education requirements for the co-carrier; and

11. Filing of results with the Maryland Commission.

All this activity illustrates that state commissions are fully capable of examining and resolving the technical issues surrounding local loop unbundling. MFS presents no valid reasons why this extensive process should be interrupted and a "national solution" imposed upon the states. Federal solutions are inherently inadequate in taking into account important differences which exist among the states. The MFS Petition for Rulemaking should be denied in favor of allowing states to resolve these unbundling issues.

B) State Commissions are Capable of Setting their Own Policy Regarding Pricing of the Unbundled Local Loop

MFS argues that this Commission should adopt voluntary pricing guidelines for the intrastate portion of unbundled loops that are premised on the LEC's cost of providing the service and that reflect this functional equivalency. This proposal ignores the many criteria employed by state commissions in evaluating various rate designs. Among the issues considered by commissions are: cost of service, value of service, constraints of revenue requirements, avoidance of unreasonable discrimination, rate structure continuity, appropriate rate relationships, ease of understanding and administration, customer impact, competitive impact, and incentives for promotion of the efficient use of a service.

These items are a major consideration in any rate design. National pricing guidelines cannot incorporate all these considerations and cannot reflect the various differences among the states which state-established rate designs take into account.

MFS asserts that the LEC's Total Service Long Run Incremental Cost ("TSLRIC") should serve as the target price and cap for unbundled loops. In Case No. 8587, the Maryland Commission recognized the need for a mark-up above TSLRIC to cover shared and common costs associated with unbundled loops. The Maryland Commission does not consider a TSLRIC mark-up, for shared and common costs, to be a component of universal service funding. Rather, such a mark-up is important for accurate cost-based ratemaking. If shared and common costs are not properly allocated to all services which are provided by a carrier, some service will have to shoulder an unfair allocation of these costs. The Maryland Commission feels that this issue is separate and distinct from universal service support.

As an alternative to cost-based pricing, MFS recommends this Commission also adopt an imputation standard which would ensure that the price a LEC charges a competitor for an unbundled loop is fully reflected in the LEC's end user price for an exchange access line. The "inverse imputation rule" would require that the prices of the unbundled exchange access

line components be derived from existing access line prices established in the LEC's effective state tariffs.⁵ The rule that the ratio of price to cost for each element and the bundled exchange access lines be the same is an arbitrary rule. It is unreasonable to assume that these ratios necessarily would always match.

In addition, MFS recommends that this Commission establish guidelines to require the pricing of unbundled loops at the lesser of TSLRIC or a rate to be determined using the inverse imputation rules. This requirement would preclude a state commission from allowing a mark-up for shared and common costs. As noted earlier, the Maryland Commission already has found a need for a mark-up above TSLRIC to insure accurate cost-based ratemaking.

C) The Unbundling Proposal Is Not In the Public Interest

MFS states that unbundling is in the public interest. The impact on customers in non-competitive areas also must be analyzed in determining the public interest. For instance, in Case No. 8587 the Maryland Commission accepted the principle that competitive entry was in the public interest as long as it would not cause undue detriment to subscribers on the incumbent network who cannot avail themselves of the competitive opportunities. In order to guard against this undue detriment, the

⁵ The reference to state tariffs is unclear and needs to be explained.

Maryland Commission determined that interconnection rates should recover a fair share of the shared and common costs incurred by BA-MD. Based on the precedent established in determining intrastate access charges for long-distance service, the Maryland Commission found it to be in the public interest to ensure that the revenues from such a charge were sufficient to buffer other basic service rates from undue upward price pressure.

Another aspect of public interest is universal service. Because of the existence of explicit and implicit subsidies, some local service rates may not cover their costs. Cost studies prepared by BA-MD in Case No. 8584, Phase II, show that in certain areas of Maryland, rates do not cover the cost of dialtone service. The Maryland Commission anticipates instituting a proceeding to consider these universal service issues. In its petition, MFS requests the same price to cost ratio as the bundled exchange access. This implies that rates for unbundled loops for MFS may not recover BA-MD's costs.

Issues of public interest and universal service are often local in nature. States should be permitted to establish unbundling rules which consider these aspects of telecommunications regulation.

**D) Wireless and Cable Television Providers
Are a Feasible Alternative to the Local
Loop**

In its petition, MFS asserts that wireless and cable television providers are not feasible alternatives to the local loop. Maryland is proof to the contrary. A recent Baltimore Sunpaper article (March 26, 1995) describes Baltimore City, Maryland, as the convergence city where telephone service providers will compete using various forms of technology. The joint venture of Sprint's, Teleport Communications Group, Comcast, Tele-Communications, Inc., and Cox Cable Communications will alter the concept of a single provider for cable, local telephone, long-distance, wireless phone and even on-line services in Baltimore. Comcast Cablevision announced it would spend \$100 million to upgrade its three suburban Baltimore networks. MCI Communications, the nation's second largest long-distance company, is laying cable in many areas of Maryland as it gears up to compete for local phone business through its subsidiary, MCI Metro Access Transmission Services, Inc. Recently, AT&T emerged as the high bidder for the Baltimore/Washington license in the recent auction of radio spectrum for wireless PCS services. SBC Communications, formerly Southwestern Bell, has put its plans to compete for local telephone business in Montgomery County on hold,⁶ but

⁶ SBC's Media Ventures subsidiary filed an application with the Maryland Commission to provide residential phone service in Montgomery County. SBC Media Ventures owns the cable television franchise and would use its existing network to initiate its phone system. In November 1994, the

continues to compete in the wireless arena through its Cellular One subsidiary. During 1994, MFS-I, MCI Metro and TCG applications to provide local exchange service in Maryland to business customers were approved by the Maryland Commission. Smaller companies include Nextell Corp., which is building its own wireless telephone network; GE Rescom, a General Electric subsidiary that is undercutting BA-MD rates at large apartment projects; and Ultra-Vision LLC, which is seeking a second Baltimore cable franchise to compete with TCI's United Artist Cable.

Generally, technological advancements have aided the development of services that compete with the LEC's provision of the local loop. Traditional local loop technology has been based on individual copper wire pairs linking the central office to the customer premises. As technology has evolved other facility options are becoming available. Cellular radio service, for example, could become an effective competitor to the local exchange if prices for equipment and service continue to fall. Other evolving radio technologies, such as personal communications service (PCS), may make possible the provision of multiple wireless loop providers. Similarly, cable television service franchise may offer loop services in competition with the LECs.

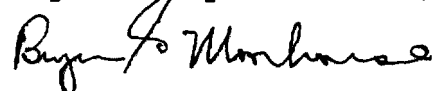
Company requested that the procedural schedule be suspended but did not withdraw the application.

In the country in general and in Maryland in particular, wireless and cable companies are rapidly preparing to compete with LECs. MFS's contention that these companies are not feasible alternatives simply is incorrect and out of step with the recent changes in the telecommunications market.

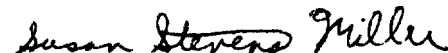
CONCLUSION

The FCC should dismiss the MFS Petition for Rule-making. State commissions are capable of addressing both the technical and pricing issues associated with unbundling. MFS has offered no justification or need for a national standards to govern local unbundling. Many commissions already have taken steps toward the unbundling of the local loop and they should be permitted to continue these efforts.

Respectfully submitted,



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DATE: April 10, 1995